IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

RSA No. 398 of 1995

Reserved on 19.6.2007

Date of decision 6.8.2007

State of H.P. Appellant

Versus

Gian Singh and others Respondents

Coram:

The Hon'ble Mr.Justice Rajiv Sharma, Judge.

Whether approved for reporting?[1] No.

For the Appellant: Mr.M.S.Chandel, Advocate General, with Mr.M.A.Khan and Ms.Meenakshi Sharma, Dy. Advocate Generals.

For the Respondents: Mr.K.D.Sood, Advocate, for respondent No.1.

Rajiv Sharma, J.

This second appeal arises out of the judgment and decree passed by the Additional District Judge, Shimla on 9.8.1995 in C.A.No.34-S/13 of 1990.

The brief facts necessary for the adjudication of the second appeal are that the respondent-plaintiff hereinafter referred to as the plaintiff for convenience sake, had filed a civil suit in the court of Sub Judge Ist Class, Rohru on 23.9.1986 for declaration to the effect that he was owner of the land denoted by Khasra No.1215 min measuring 20 bighas situate in Chak Karasa Tehsil Rohru and that ejectment order dated 6.9.86 passed

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[1] Whether reporter of local papers are allowed to see the judgment ? No.

by defendant No.2 be declared illegal and further a decree of permanent injunction was prayed restraining the defendants from causing interference qua the suit land permanently. In the written statement the defendants controverted the allegations contained in the plaint and it was alleged that the jurisdiction of civil court was barred under Section 171 of the H.P. Land Revenue Act as well as hit under Section 11 of the CPC, the plaintiff had no cause of action to file the present suit on the grounds of maintainability, non joinder and misjoinder of parties, there was non compliance of mandatory provision of Section 80 CPC, the suit was not within limitation and that suit was not properly valued for the purposes of court fee and jurisdiction.

The trial court on the basis of the pleadings of the parties had framed the following issues:

1. Whether this court has no jurisdiction to try the suit? OPD
2. Whether the suit is barred by principle of res judicata as alleged? OPD
3. Whether the suit in the present form is not maintainable? OPD
4. Whether the suit is bad for notice under Section 80 CPC as alleged? OPD
5. Whether the suit is bad for non joinder and mis-joinder of necessary parties? OPD
6. Whether the suit is properly valued for the purpose of court fee and jurisdiction? OPP
7. Whether the plaintiff has become owner of the suit land by adverse possession and the order of A.C.IInd Grade, Rohru dated 6.9.1986 and of Financial Commissioner dated 22.7.1985 are illegal and not binding as alleged ? OPP
8. Relief.

The trial court had given the following findings on the aforesaid issues:-

Issue No.1 No

Issue No.2 No

Issue No.3 No

Issue No.4 No

Issue No.5 No

Issue No.6 Yes

Issue No.7 Yes

Relief As per the operative portion of the judgment suit is decreed.

The trial court on the basis of the oral and documentary evidence had decreed the suit filed by the plaintiff to the effect that the plaintiff along with proforma defendants No.3 to 5 had become owners of the suit land by way of adverse possession and the order dated 6.9.1986 of ejectment passed against the plaintiff by defendant No.2 was illegal. The defendant-State filed an appeal against the judgment and decree passed by the learned trial court dated 18.1.1990 before the learned Additional District Judge, Shimla on 6.4.1990. The learned District Judge had framed the following points for determination:

1. Whether the findings of the learned lower court are justifiable on the basis of the law and material placed on the file?

2. Final order.

The findings recorded by the learned appellate court on the aforesaid points are as under:

Point No.1 Yes

Final order Appeal dismissed as per operative part of the judgment.

The Additional District Judge, Shimla had dismissed the appeal on 9.8.1995.

The second appeal was admitted by the court on the following substantial questions of law:

1. Whether the respondent has failed to prove his plea of adverse possession as his possession over the suit land was not peaceful, continuous, un-interrupted and hostile to true owner?

2. Whether the civil court has no jurisdiction to try the present suit in view of Sections 163,171 of the H.P. Land Revenue (Amendment)Act,1989?

3. Whether the jurisdiction of the civil court is barred under the provisions of H.P. Village Common Lands Vesting and Utilization Act to decide the question of vestment of shamlat land as per Section 10 of the H.P. Village Common lands Vesting and Utilization Act?

4. Whether the respondent has failed to prove his cultivating possession over the suit land prior to 26th January, 1950 to get exemption from the vestment of shamlat land?

5. Whether the mis-interpretation of oral as well as documentary evidence adduced on record is itself a substantial question of law?

During the course of pendency of the appeal defendants No.2 to 6 were proceeded against ex parte and Kali Ram proforma respondent also died and his legal representatives were brought on record, vide order dated 18.3.1997, but subsequently proceeded against ex parte.

The learned Advocate General had strenuously argued that in view of the revenue entries i.e. Jamabnadi Ex.DB to Ex.DE the plaintiff was never shown in possession over the suit land. He further contended that the plaintiff had failed to prove his adverse possession for more than 30 years. Shri K.D.Sood, learned counsel appearing for respondent No.1 had supported the judgment of the learned Additional District Judge dated 9.8.1995.

I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

All the substantial questions of law being interlinked are taken up together.

The plaintiff had appeared as PW-1 and had categorically stated that he was in possession of the suit land for the last more than 40 years. The statement of the plaintiff had been duly corroborated by PW-2 and PW-3. The plaintiff had produced on record copies of jamabandis for the years 1961-62 and 1965-66. In these two jamabandis the plaintiff had been shown in possession. It has also recorded in the jamabandi that the plaintiff had raised orchard on the disputed land. The appellant-State had relied upon the statements of DW-1 and DW-2, namely, Basu Dev and Gulat Ram, respectively and DW-3 Birbal who had brought the encroachment file. In the jamabandis produced by the plaintiff i.e. Ex.P1 and Ex.P2 the plaintiff and proforma defendants' names have been recorded in the column of possession but in the jamabandi produced by the appellant the entries have been changed. But in the jamabandis i.e. Ex.DH and Ex.DJ again the entries of the plaintiff and proforma defendants appear and entry of apple orchard has been made. The plaintiff on the basis of the entries made in the jamabandis and also on the basis of ocular evidence had proved that he was in possession of the land in dispute. First entry made in favour of the plaintiff in the jamabandi is for the year 1961-62. The plaintiff was in possession of the suit land since the year 1960-61 and he had become owner of the land in the year 1973. The State had come into picture only in the year 1974 after the enactment of H.P. Village Common Land (Vesting and Utilization) Act, 1974. In other words, the plaintiff had acquired title in the suit land before the State

Government came to own the land on the basis of the H.P. Village Common Land (Vesting and Utilization) Act, 1974.

The upshot of above discussion is that there is no merit in this appeal, especially when no question of law much less any substantial question of law arises for determination in this appeal. Hence the appeal is dismissed.

August 6,2007(g) **(Rajiv Sharma), J.**